

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

HOLLY BERRY,

Plaintiff,

vs.

CHEROKEE NATION, and CHEROKEE
NATION ENTERTAINMENT, LLC, a
foreign Limited Liability Company,

Defendants.

Case No. 20-cv-463-RAW

Jury Trial Demanded
Attorney Fees Retained

PETITION

COMES NOW the Plaintiff, **Holly Berry**, by and through her attorney of record, Stephen P. Gray, of Sterling Oaks Law Firm, and hereby submits this Petition against the above Defendants, Cherokee Nation and its wholly owned Cherokee Nation Company, Cherokee Nation Entertainment, LLC, a foreign Limited Liability Company; and for her causes of action alleges and states as follows:

INTRODUCTION

1. This is an action for a wrongful taking pursuant to the 5th Amendment of the United States Constitution, Title 42 U.S.C. § 1983, the Indian Civil Rights Act of 1968, and Article II Section 24 of the Oklahoma State Constitution. Defendants substantially interfered with Plaintiff's beneficial use of Plaintiff's property and for this reason constitutes a taking, and Plaintiff seeks damages to the full extent allowed under each cause of action.

JURISDICTION

2. Jurisdiction is proper pursuant to Art. III of the U.S. Constitution, which states federal courts can hear “all cases, in law and equity, arising under this Constitution, and the laws of the United States....”

FACTS

3. Holly Berry is a single woman, and resides in Tahlequah, Cherokee County, State of Oklahoma, and owns the property in Cherokee County referenced on Exhibit “A”.
4. The Cherokee Nation is a sovereign Indian tribe that is a government entity and has commercially developed facilities located in Cherokee County nearby and/or adjacent to Plaintiff’s property. Cherokee Nation Entertainment, LLC, is a wholly owned tribal corporation owned solely by the Cherokee Nation.
5. The Plaintiff’s real property has been suffering repeated flooding and impoundment of water as a result of the Defendants’ failure to properly design water runoff from some of its commercial development in Cherokee County, Oklahoma nearby and/or adjacent to Plaintiff’s property.
6. The aforesaid property is the subject of the action, and is located within Cherokee County, Oklahoma.

FIRST FEDERAL CAUSE OF ACTION **INVERSE CONDEMNATION - VIOLATION OF THE 5TH AMENDMENT** **OF THE U.S. CONSTITUTION AND TITLE 42 U.S.C. § 1983**

7. The Plaintiff incorporates paragraphs 1-6 into her cause of action as if set forth herein.
8. Plaintiff alleges she is entitled to bring this special proceeding pursuant to the provisions of the 5th Amendment of the U.S. Constitution.

9. Plaintiff alleges she is entitled to bring this special proceeding against the Defendants, Cherokee Nation and Cherokee Nation Entertainment, LLC, pursuant to Title 42 U.S.C. § 1983. The Cherokee Nation is a government entity within the meaning of Title 42 U.S.C. § 1983, and Cherokee Nation Entertainment, LLC, is an instrumentality of the Co-Defendant, Cherokee Nation.
10. The Plaintiff has experienced severe flooding, erosion, and impoundment of water on her property during the past couple of years due to the failure of the Defendants to properly design water runoff from its commercial development, and this flooding has substantially interfered with Plaintiff's use of her property by flooding several acres continuously and diminishing the usability and value of said property as well as adversely impacting her remaining property.
11. Therefore, by virtue of the Defendants' taking of the subject property, the Plaintiff is entitled to just compensation in an amount equal to the value of the property taken, plus damages to the remainder.
12. The Plaintiff's increased flooding caused by the Defendants' actions constitutes a public taking of a flowage easement and detention pond upon the Plaintiffs' property pursuant to the 5th Amendment of the U.S. Constitution and Title 42.U.S.C. § 1983.
13. The Plaintiff has been damaged in excess of \$75,000.00 by virtue of the Defendants' substantial interference with the use of Plaintiff's property by virtue of the taking of a flowage easement and detention pond upon and across her property.

WHEREFORE, premises considered, the Plaintiff hereby demands her right to a jury trial to determine if a taking has occurred by the Defendants, and prays for judgment for the full amount of the just compensation to be determined by the jury to be due and owing to Plaintiff,

by Defendants, together with pre-judgment and post-judgment interest as provided by law, the costs of the action accrued and accruing, including reasonable attorney fees and for all other and further relief to which Plaintiff may be entitled.

SECOND FEDERAL CAUSE OF ACTION
VIOLATION OF THE INDIAN CIVIL RIGHTS ACT OF 1968

14. Plaintiff adopts and incorporates the allegations set forth in paragraph 1-13 above as if fully set forth herein.
15. Pursuant to Title 25 U.S.C. § 1302(5) and (8) of the Indian Civil Rights Act of 1968 and Title 42 U.S.C. § 1983, Plaintiff is seeking to recover damages for the Defendants' taking Plaintiff's private property for a public use without just compensation, and for depriving Plaintiff of her property without due process of law.
16. Plaintiff alleges that the Defendants failed to properly design its commercial development such that it substantially interfered with Plaintiff's beneficial use of her property and has taken several acres of her property for a detention pond and drainage easement and caused severance damages to the remainder of her property.
17. Plaintiff has sustained damages in excess of \$75,000.00 to her property as a result of Defendants' actions, and Plaintiff should be compensated for her property damage.

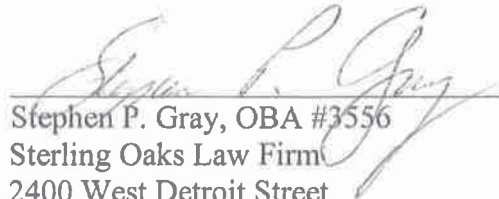
WHEREFORE, premises considered, Plaintiff prays for judgment against the Defendant for damages to her property, in an amount in excess of \$75,000.00, and for an award of her reasonable attorneys' fee, court costs, and such other relief as this honorable court deems just and proper.

**PENDENT STATE CAUSE OF ACTION
INVERSE CONDEMNATION – VIOLATION OF ART. II SECTION 24 OF THE
OKLAHOMA STATE CONSTITUTION**

18. Plaintiff adopts and incorporates the allegations set forth in paragraph 1-17 above as if fully set forth herein.
19. Plaintiff alleges she is entitled to bring this special proceeding pursuant to the provisions of Article II Section 24 of the Constitution of the State of Oklahoma, and Title 66 O.S. § 53-57, and Title 27 O.S. § 12.
20. The Plaintiff has experienced severe flooding, erosion, and impoundment of water on her property due to the failure of the Defendants to properly design and maintain their commercial development, and this flooding has substantially interfered with the Plaintiff's beneficial use of Plaintiff's property.
21. Therefore, by virtue of the Defendants' taking of the subject property, the Plaintiff is entitled to just compensation in an amount equal to the value of the property taken, plus damages to the remainder.
22. The Plaintiff's increased flooding caused by the Defendants' actions constitutes a public taking of the Plaintiff's property pursuant to Article II Section 24 of the Oklahoma Constitution.
23. The Plaintiff has been damaged in excess of \$75,000.00 by the substantial interference with the use of her property by virtue of the Defendants' taking.

WHEREFORE, premises considered, Plaintiff prays for judgment against the Defendants for damages to her property, in an amount in excess of \$75,000.00, an award of a reasonable attorneys' fee, court costs, and such other relief as this honorable court deems just and proper.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Stephen P. Gray", is written over a horizontal line.

Stephen P. Gray, OBA #3556
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Attorney for Plaintiff, Holly Berry

Jury Trial Demanded

Attorney's Lien Claimed

VERIFICATION

STATE OF OKLAHOMA }
COUNTY OF CHEROKEE } ss.

I, Holly Berry, of lawful age, being first duly sworn upon oath, depose and state that I am the above-named **Plaintiff**, and I have read the above and foregoing **Pleading**, and that the facts and matters therein set forth are true and correct to the best of my knowledge and belief.

Holly Berry
Holly Berry, Plaintiff

SUBSCRIBED AND SWORN to before me this 9th day of December, 2020.

Yolonda Lemons
Notary Public

My Commission Expires:

6-8-2024

